

AMENDED IN ASSEMBLY AUGUST 20, 2012

AMENDED IN ASSEMBLY JUNE 14, 2012

AMENDED IN ASSEMBLY MAY 21, 2012

AMENDED IN SENATE JANUARY 5, 2012

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 778

Introduced by Senator Padilla

February 18, 2011

An act to add Sections 25600.1 and 25600.2 to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 778, as amended, Padilla. Alcoholic beverages licensees: contests and sweepstakes.

The Alcoholic Beverage Control Act prohibits any licensee from giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as provided.

This bill would permit an authorized licensee, as defined, to conduct a consumer contest—*or, as defined, and conduct or sponsor consumer sweepstakes*, as defined, offering the chance to win prizes, if specified conditions are met.

The Alcoholic Beverage Control Act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is a misdemeanor. This bill would expand existing crimes by imposing additional duties on a licensee under the act, thus, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25600.1 is added to the Business and
2 Professions Code, to read:

3 25600.1. (a) An authorized licensee may conduct consumer
4 contests, subject to the following conditions:

5 (1) (A) ~~No entry fee may be charged to participate in a contest~~
6 ~~authorized by this subdivision.~~ Entry or extra chances in a contest
7 shall not be made available via the purchase of an alcoholic
8 beverage.

9 (B) Entry into or participation in a contest shall be limited to
10 persons 21 years of age or older.

11 (C) No contest shall ~~require~~ *involve* consumption of alcoholic
12 beverages by a participant.

13 (D) A contest may not be conducted for the benefit of any
14 permanent retail licensee.

15 (2) (A) Closures, caps, cap liners, corks, labels, cartons, cases,
16 packaging, or other similar material shall not be used as an entry
17 to a contest or as a means of determining the amount or size of the
18 prize or the winner in a contest, except as provided in
19 subparagraphs (D) and (F).

20 (B) The authorized licensee shall provide an alternative means
21 of entry that does not require a visit to a licensed premises.

22 (C) Except as provided in subparagraph (D), removable entry
23 forms shall not be used on alcoholic beverage labels, containers,
24 packaging, cases, or cartons.

25 (D) Removable entry forms that are neck hangers shall be used
26 only on bottles of wine or distilled spirits, and shall not require
27 purchase of the product. Removable neck hangers shall be used
28 only if other entry forms are available at the point of sale or if an
29 alternative means of entry is also available.

1 (E) Entry forms may be provided through electronic or other
2 media, including point of sale.

3 (F) Codes that may be scanned or electronically entered by a
4 consumer where the authorized licensee has permanently affixed
5 the codes as part of the original alcoholic beverage label, container,
6 packaging, case, or carton, and where the codes are not removable
7 and not required to be removed are permitted as a form of entry.

8 (G) All permitted means of entry, including the use of electronic
9 or scanner codes, shall clearly indicate that no purchase is required
10 to enter.

11 (3) A contest shall not provide for the instant or immediate
12 awarding of a prize or prizes. Instant or immediate notification to
13 the consumer that he or she is a winner is permissible.

14 (4) ~~A~~ *Except for providing a means of entry*, a contest authorized
15 by this section shall not be conducted at the premises of a retail
16 licensee or the premises of a winegrower or beer manufacturer
17 operating under a duplicate license for a branch office.

18 (5) Alcoholic beverages or anything redeemable for alcoholic
19 beverages shall not be awarded as a contest prize. This paragraph
20 shall not prohibit a contest in which the prize is cash or cash
21 equivalent or the awarding of cash or cash equivalent ~~in lieu of a~~
22 ~~prize that is tangible personal property or real property.~~

23 (6) A retail licensee shall not serve as the agent of an authorized
24 licensee by collecting or forwarding entries or awarding prizes to,
25 *or redeeming prizes for*, a contest winner.

26 (7) A licensee that is not an authorized licensee shall not directly
27 or indirectly underwrite, share in, or contribute to, the costs of a
28 contest authorized by this section or serve as the agent of an
29 authorized licensee to collect or forward entries or to furnish any
30 prize to a contest winner.

31 (8) (A) Advertising of a contest shall comply with the signage
32 and advertising restrictions contained in this chapter, Chapter 15
33 (commencing with Section 25500), and any regulations issued by
34 the department.

35 (B) Advertising or promotion of a contest shall not identify or
36 refer to any retail licensee.

37 (C) A retail licensee shall only advertise or promote a contest
38 authorized by this section in the manner specified in subparagraph
39 (A).

(D) Advertising or promotion of a contest shall only be conducted on the premises of a retail licensee when such advertisement or promotion involves a minimum of three unaffiliated retail licensees. For purposes of this subparagraph, “unaffiliated retail licensees” shall not include any retail licensee owned or controlled in whole or in part by an authorized licensee or any officer, director, or agent of that licensee.

(E) Placement of signs or other advertising of a contest in a licensed retail premises shall not be conditioned upon the following:

(i) The placement of any product within the licensed premises or the restriction, in any way, of the purchase of a product by a licensee, the removal of a product from the sales area of a licensed premises, or the resetting or repositioning of a product within the licensed premises.

(ii) The purchase or sale of any product produced, imported, distributed, represented, or promoted by an authorized licensee or its agent.

(F) An agreement, whether written or oral, entered into, by, and between a retail licensee and an authorized licensee or its agent that precludes the advertisement or promotion of a contest on the premises of the retail licensee by another authorized licensee is prohibited.

(9) Contest prizes shall not be awarded to an authorized licensee, retail licensee, or wholesale licensee or agent, officer, employee, or family member of an authorized licensee, retail licensee, or wholesale licensee. ~~For purpose~~ *the purposes* of this paragraph, “family member” means a spouse, parent, sibling, child, son-in-law, daughter-in-law, and lineal descendants, including those by adoption. An authorized licensee shall maintain all records pertaining to a contest for three years following the completion of a contest. This section shall not apply to contests conducted by an authorized licensee as part of a sales incentive program for wholesale licensees or their employees or an authorized licensee’s employees.

(b) Nothing in this section shall preclude licensees from sponsoring contests as permitted by regulations of the department.

(c) For purposes of this section:

(1) (A) “Authorized licensee” means a winegrower, beer and wine importer general, beer manufacturer, out-of-state beer

1 manufacturer certificate holder, distilled spirits manufacturer,
2 distilled spirits manufacturer's agent, distilled spirits importer
3 general, distilled spirits general rectifier, rectifier, out-of-state
4 distilled spirits shipper's certificate holder, brandy manufacturer,
5 and brandy importer. An authorized licensee may conduct, ~~sponsor,~~
6 ~~or participate in~~ a consumer contest pursuant to this section ~~if~~
7 *regardless of whether* the licensee holds any additional license not
8 included in this paragraph.

9 (B) An "authorized licensee" shall not include a beer and wine
10 wholesaler, a beer and wine importer general, or distilled spirits
11 importer general that only holds a wholesaler's or retailer's license
12 as an additional license.

13 (2) "Contest" means a game, contest, puzzle, or similar activity
14 that holds out or offers to participants the opportunity to receive
15 or compete for gifts, prizes, gratuities, or other things of value as
16 determined by skill, knowledge, or ability rather than upon random
17 selection. Skill, knowledge, or ability does not include the
18 consumption or use of alcoholic beverages.

19 (d) Nothing in this section authorizes conducting any contest
20 where consumers are entitled to an allotment or accumulation of
21 points based on purchases made over a period of time that can be
22 redeemed for prizes, things of value, or additional contest entries.

23 (e) *A prize awarded for a contest conducted pursuant to this*
24 *section shall not be subject to the monetary limitation imposed by*
25 *Section 25600 or a regulation of the department.*

26 (e)

27 (f) An authorized licensee that violates this section, in addition
28 to any other penalty imposed by this division, may be prohibited
29 by the department from offering a contest to California residents
30 for a period of 12 months.

31 SEC. 2. Section 25600.2 is added to the Business and
32 Professions Code, to read:

33 25600.2. (a) An authorized licensee may conduct *or sponsor*
34 consumer sweepstakes, subject to the following conditions:

35 (1) (A) No entry fee may be charged to participate in a
36 sweepstakes authorized by this subdivision. Entry or extra chances
37 in a sweepstakes shall not be made available via the purchase of
38 an alcoholic beverage.

39 (B) Entry into or participation in a sweepstakes shall be limited
40 to persons 21 years of age or older.

1 (C) No sweepstakes shall ~~require~~ *involve* consumption of
2 alcoholic beverages by a participant.

3 (D) Subject to subparagraph (B), any sweepstakes offered in
4 California shall be open to all residents of California.

5 (E) A sweepstakes may not be conducted for the benefit of any
6 permanent retail license.

7 (2) (A) Closures, caps, cap liners, corks, labels, cartons, cases,
8 packaging, or other similar material shall not be used as an entry
9 to a sweepstakes or as a means of determining the amount or size
10 of the prize or the winner in a sweepstakes, except as provided in
11 subparagraphs (D) and (F).

12 (B) The authorized licensee shall provide an alternative means
13 of entry that does not require a visit to a licensed premises.

14 (C) Except as provided in subparagraph (D), removable entry
15 forms shall not be used on alcoholic beverage labels, containers,
16 packaging, cases, or cartons.

17 (D) Removable entry forms that are neck hangers shall be used
18 only on bottles of wine or distilled spirits, and shall not require
19 purchase of the product. Removable neck hangers shall be used
20 only if other entry forms are available at the point of sale or if an
21 alternative means of entry is also available.

22 (E) Entry forms may be provided through electronic or other
23 media, including point of sale.

24 (F) Codes that may be scanned or electronically entered by a
25 consumer where the authorized licensee has permanently affixed
26 the codes as part of the original alcoholic beverage label, container,
27 packaging, case, or carton, and where the codes are not removable
28 and not required to be removed are permitted as a form of entry.

29 (G) All permitted means of entry, including the use of electronic
30 or scanner codes, shall clearly indicate that no purchase is required
31 to enter.

32 (H) All sweepstakes ~~entry forms~~ *entries* shall provide ~~an~~ *the*
33 entrant with an equal odds of winning.

34 (3) A sweepstakes shall not provide for the instant or immediate
35 awarding of a prize or prizes. Instant or immediate notification to
36 the consumer that he or she is a winner is permissible.

37 (4) ~~A~~ *Except for providing a means of entry, a* sweepstakes
38 authorized by this section shall not be conducted at the premises
39 of a retail licensee or the premises of a winegrower or beer

1 manufacturer operating under a duplicate license for a branch
2 office.

3 (5) Alcoholic beverages or anything redeemable for alcoholic
4 beverages shall not be awarded as a sweepstakes prize. This
5 paragraph shall not prohibit a sweepstakes in which the prize is
6 cash or cash equivalent or the awarding of cash or cash equivalent
7 ~~in lieu of a prize that is tangible personal property or real property.~~

8 (6) A retail licensee shall not serve as the agent of an authorized
9 licensee by collecting or forwarding entries or awarding prizes to,
10 *or redeeming prizes for*, a sweepstakes winner. The matching of
11 entries with numbers or pictures on the point-of-sale materials at
12 retail licensed premises is permitted only if entrants are also offered
13 the opportunity to use an alternative means to determine
14 prize-winning status. *An authorized licensee may furnish and*
15 *maintain a deposit box on a retail licensed premises for the*
16 *collection and forwarding of sweepstakes entry forms.*

17 (7) A licensee that is not an authorized licensee shall not directly
18 or indirectly underwrite, share in, or contribute to, the costs of a
19 sweepstakes authorized by this section or serve as the agent of an
20 authorized licensee to collect or forward entries or to furnish any
21 prize to a sweepstakes winner.

22 (8) (A) Advertising of a sweepstakes shall comply with the
23 signage and advertising restrictions contained in this chapter,
24 Chapter 15 (commencing with Section 25500), and any regulations
25 issued by the department.

26 (B) Advertising or promotion of a sweepstakes shall not identify
27 or refer to any retail licensee.

28 (C) A retail licensee shall only advertise or promote a
29 sweepstakes authorized by this section in the manner specified in
30 subparagraph (A).

31 (D) Advertising or promotion of a sweepstakes shall only be
32 conducted on the premises of a retail licensee when such
33 advertisement or promotion involves a minimum of three
34 unaffiliated retail licensees. For purposes of this subparagraph,
35 “unaffiliated retail licensees” shall not include any retail licensee
36 owned or controlled in whole or in part by an authorized licensee
37 or any officer, director, or agent of that licensee.

38 (E) Placement of signs or other advertising of a sweepstakes in
39 a licensed retail premises shall not be conditioned upon the
40 following:

1 (i) The placement of any product within the licensed premises
2 or the restriction, in any way, of the purchase of a product by a
3 licensee, the removal of a product from the sales area of a licensed
4 premises, or the resetting or repositioning of a product within the
5 licensed premises.

6 (ii) The purchase or sale of any product produced, imported,
7 distributed, represented, or promoted by an authorized licensee or
8 its agent.

9 (F) An agreement, whether written or oral, entered into, by, and
10 between a retail licensee and an authorized licensee that precludes
11 the advertisement or promotion of a sweepstakes on the premises
12 of the retail licensee by another authorized licensee or its agent is
13 prohibited.

14 (9) Sweepstakes prizes shall not be awarded to an authorized
15 licensee, retail licensee, or wholesale licensee or agent, officer,
16 employee, or family member of an authorized licensee, retail
17 licensee, or wholesale licensee. For ~~purpose~~ *the purposes* of this
18 paragraph, “family member” means a spouse, parent, sibling, child,
19 son-in-law, daughter-in-law, and lineal descendants, including
20 those by adoption. An authorized licensee shall maintain all records
21 pertaining to a sweepstakes for three years following the
22 completion of a sweepstakes.

23 (b) For purposes of this section:

24 (1) (A) “Authorized licensee” means a winegrower, beer and
25 wine importer general, beer manufacturer, out-of-state beer
26 manufacturer certificate holder, distilled spirits manufacturer,
27 distilled spirits manufacturer’s agent, distilled spirits importer
28 general, distilled spirits general rectifier, rectifier, out-of-state
29 distilled spirits shipper’s certificate holder, brandy manufacturer,
30 and brandy importer. An authorized licensee may conduct, *sponsor*,
31 or participate in a sweepstakes pursuant to this section ~~if~~ *regardless*
32 *of whether* the licensee holds any additional license not included
33 in this paragraph.

34 (B) An “authorized licensee” shall not include a beer and wine
35 wholesaler, a beer and wine importer general, or distilled spirits
36 importer general that only holds a wholesaler’s or retailer’s license
37 as an additional license.

38 (2) “Sweepstakes” means a procedure, activity, or event for the
39 distribution of anything of value by lot, chance, or random selection
40 where the odds for winning a prize are equal for each entry.

1 (c) Nothing in this section authorizes conducting sweepstakes
2 where consumers are entitled to an allotment or accumulation of
3 points based on purchases made over a period of time that can be
4 redeemed for prizes, things of value, or additional sweepstakes
5 entries.

6 (d) *A prize awarded for a sweepstakes conducted pursuant to*
7 *this section shall not be subject to the monetary limitation imposed*
8 *by Section 25600 or a regulation of the department.*

9 ~~(d)~~

10 (e) An authorized licensee that violates this section, in addition
11 to any other penalty imposed by this division, may be prohibited
12 by the department from offering a sweepstakes to California
13 residents for a period of 12 months.

14 SEC. 3. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.